IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Writ Petition No. 90 (M/B) 2003

Offshore Pipelines International Ltd.
A company incorporated in the Cayman
Islands and having its office
in India for communication purposes
C/o S.R. Batliboi & Co. 18th Floor,
Express Towers, Nariman Point,
Bombay-21 through its constituted
attorney

……. Petitioner

Versus

Deputy Commissioner of Income-tax,
Circle 1, Dehradun, Uttaranchal &
Others ……. Respondents

Writ Petition No. 37(M/B) 2003

Offshore Gyundai International Ltd.
Though Seog Yun Oh, Power of
Attorney holder of Offshore Hyundai
International Ltd., Company Incorporated
Under the relevant Company Legislation in the
Cayman Island and was having
its office in India at World Trade Centre, Centre 1,
30th Floor, Bombay Project Office,
Unit-1, Mumbai-400 005.
Now Correspondence Address to
Mumbai at Unit No. 2
17th Floor, Coimmerce Centre no. 1,
World Trade Centre, Mumbai
400 005. …….. Petitioner

Versus

Deputy Commissioner of Income-tax,
Circle 1, Dehradun Uttaranchal &
Others …….. Respondents

Mr. Mr. P.J. Pardiwalla/Mr/ V.B.S. Neg/Mr. Sharad Sharma Advocates for the petitioners.
Mr. Mr. S.K. Posti, Advocate for other respondents.

Coram Hon. S.H. Kapadia, C.J.
Hon. Rajesh Tandon, J.

Dated: 08.09.2003:

ORAL JUDGMENT: [Per Hon. S.H. Kapadia, C.J.)

Rule

Respondents waive service.

Since the matter is squarely covered by the decision of this Court reported in 259 I.T.R. page 138- Mc Dermott International Inc. Vs. Additional Commissioner of Income-Tax and another, we have disposed of the present writ petition finally at the state of admission.

For the sake of convenience, we are mentioning the facts of writ petition no. 90 of 2003, which facts are identical to writ petition no. 37 of 2003.

The assessee, a non-resident company engaged in the work of installation and fabrication of pipes, platforms relating to oil exploration, submitted its return for the assessment year 1993-94 and 1994-95 and they offered 1% at the gross receipt of the work done outside India as income for the assessment. The Assessing Officer assessed the total income for the relevant years and determined the same payable by the assessee under section 143(3) of the Income Tax Act after considering the particulars given by the assessee in the statement of computation of total income (page 39) and also letter dated 7.3.1994 (page 41). The assessment order was passed on 23.1.1996 and 7.2.1996 respectively. However, notice under section 148 has now been given by the Additional Commissioner of Income Tax dated 30.5.2001 stating the in view of the decision of the Tribunal reported in (2000) 72 I.T.D. page 145 (Delhi), the assessee should have offered 10% of the gross receipt for the work done outside India as income and since the assessee has offered only 1% of the gross receipt of the work done outside India as income, there has been escapement of income from tax.

We find merit in this petition. Only issue which arises for determination in this petition is whether the notice dated 30.05.2001 under section 148 of the Income Tax Act, for re-opening assessment for the assessment years 1993-94 and 1994-95, is valid. In this case, four years period has expired from the end of the assessment year in question. Therefore, the burden is on the department to show escapement of income due to failure on the part of the assessee to disclose the material facts. In this case, the assessee has disclosed all the material facts as stated above and on that basis the asseesee was assessed to tax. In the circumstances, the judgment of this Court in 259 I.T.R. page 138 squarely applies to the facts of this case to the facts

Hence, both the above writ petitions are allowed in terms of prayer clause (i).No order as to costs.

(Rajesh Tandon, J.) **(S.H.Kapadia, C.J.)**

AK.